

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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EUGENE JONES,

Plaintiff,

v.

**ORDER**  
05-CV-814S

C.O. T. LINDBLAD, SGT. J. SMITH, C.O.G.  
MARTIN, C.O. D. STAIGHT, C.O. THATHER,  
C.O. STOWELL, C.O. JOHN DOE # 2, NURSE  
FULLER, JAMES ESGROW, R.N. C. NARGREN,  
SGT. GRAY, C.O. JOHN DOE # 5, C.O. JOHN  
DOE # 6, R.N. COLLONI, R.N. G. BENNET,  
NURSE PRACTITIONER HERMAN FOWLER,  
C.O. JOHN DOE # 9, NURSE PRACTITIONER  
S. MILLER, and DR. KANG LEE,

Defendants.

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1. On November 17, 2005, Plaintiff Eugene Jones, proceeding *pro se*, commenced this action by filing a Complaint in the United States District Court for the Western District of New York against Defendants pursuant to 42 U.S.C. § 1983. (Docket No. 1.) Plaintiff alleges that Defendants violated his First and Eighth Amendment constitutional rights. *Id.* On May 8, 2008, this case was referred to the Honorable Leslie G. Foschio, United States Magistrate Judge, for all pretrial matters pursuant to 28 U.S.C. § 636(b)(1)(A) and (B). (Docket No. 35.)

2. Thereafter, Defendants Fuller, Esgrow, Bennett, Miller, and Lee filed a Motion for Partial Summary Judgment. (Docket No. 36.) Despite two scheduling Orders directing Plaintiff to file a response, Plaintiff has not filed anything in response to Defendants'

motion.

3. On March 2, 2009, Judge Foschio recommended that Defendants' Motion be granted. (Docket No. 46.) No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed Judge Foschio's Report and Recommendation as well as the underlying papers and will accept Judge Foschio's recommendation.

IT IS HEREBY ORDERED, that this Court accepts Judge Foschio's Report and Recommendation (Docket No. 46) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Defendants' Motion for Summary Judgment (Docket No. 36) is GRANTED.

FURTHER, that the Clerk of the Court is directed to terminate Defendants Nurse Floyd Fuller, James Esgrow, R.N. Georgette Bennett, Nurse Practitioner Sheryl Miller, and Dr. Kang Lee from this case.

SO ORDERED.

Dated: March 24, 2009  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge